Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 101

(T.D. 90–59)

EXPANSION OF HONOLULU PORT LIMITS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by extending the geographical limits of the port of Honolulu, Hawaii. The change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the public.

EFFECTIVE DATE: This amendment is effective on July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Inspection and Control (202–566–9425).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of Customs continuing effort to obtain more efficient use of its personnel, facilities and resources and to provide better service to the importing public, Customs published a notice in the Federal Register on February 20, 1990 (55 FR 5857), proposing to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)) by extending the limits of the port of Honolulu, Hawaii.

In the list of Customs regions, districts, and ports of entry set out in § 101.3(b), Customs Regulations, Honolulu is listed as a port of entry in the district of Honolulu, Hawaii. The port limits of Honolulu, which is on the Island of Oahu, are currently described in T.D. 53514 as "the territory embracing the 'Honolulu District,' the Honolulu Airport, Hickam Field, and all points on Pearl Harbor."

This definition of the port limits of Honolulu does not encompass the area of a new deep draft harbor recently developed at Barbers Point which is expected to result in significant net savings in overland trucking costs and reduced highway traffic in the Honolulu Harbor waterfront area. Accordingly, Customs proposed to redefine

the limits of the Honolulu port of entry to include this harbor. Customs also proposed to redefine the port limits of Honolulu by referring to the Ewa District, rather than individually listing Honolulu Airport, Hickam Field and Pearl Harbor; these three facilities, as well as Barbers Point Harbor, are all located in the Ewa District. The new definition will include what is presently in the Oahu port of entry plus the new deep draft harbor.

It should be noted that the Honolulu District and Ewa District refer to geographical tax districts on the Island of Oahu.

The proposed newly-defined port limits, including the new harbor, embrace virtually the entire industrial complex in Oahu.

DETERMINATION

Four virtually identical comments were received in response to the proposal. All were in favor of the expansion of the port limits. Upon further review of the matter, Customs has determined that it is in the public interest to adopt the expansion of the Honolulu port limits as proposed. Accordingly, the port limits of the port of entry of Honolulu are as follows:

> The territory embracing the Honolulu District and Ewa District, Island of Oahu.

AUTHORITY

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5, dated March 2, 1987 (52 FR 6282).

INAPPLICABILITY OF DELAYED EFFECTIVE DATE

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), a substantive rule is to be published not less than 30 days prior to its effective date. The statute provides, however, that this requirement may be waived where the agency finds good cause and publishes such finding with the rule. Good cause exists in this situation because the expansion of the port of Honolulu confers a benefit to the public.

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

Because this document relates to agency organization, it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. For the same reason, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DRAFTING INFORMATION

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

AMENDMENTS TO THE REGULATIONS

Part 101, Customs Regulations (19 CFR Part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. In § 101.3(b), in the Pacific Region, in the District of Honolulu, Hawaii, under the column headed "Ports of entry", the citation "(T.D. 53514)" next to the word "HONOLULU" is removed and in its place are inserted the words, "including the territory described in T.D. 90–59."

CAROL HALLETT,
Commissioner of Customs.

Approved: July 11, 1990.

PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, July 17, 1990 (55 FR 29013)]

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19 CFR Part 4

(T.D. 90–60)

ADDING THE KINGDOM OF TONGA TO THE LIST OF NATIONS ENTITLED TO SPECIAL TONNAGE TAX EXEMPTION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the Customs Service has found that the Kingdom of Tonga does not impose discriminating duties of tonnage or imposts upon vessels belonging to citizens of the U.S., and that, accordingly, vessels of Tonga are exempt from special tonnage taxes and light mon-

ey in ports of the United States. This amendment adds Tonga to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

EFFECTIVE DATES: The reciprocal privileges for vessels registered in the Kingdom of Tonga became effective on March 9, 1990. This amendment is effective July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Carrier Rulings Branch. (202–566–5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called "light money," on all foreign vessels which enter United States ports (46 U.S.C. App. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. App. 141).

Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

FINDING

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Tonga, the Customs Service has determined that vessels of Tonga are exempt from the payment of the special tonnage tax and light money, effective March 9, 1990, and that the Customs Regulations should be amended accordingly.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely reflects a finding previously made pursuant to statute, pursuant to 5 U.S.C. 553(b)(3)(B) notice and public procedure thereon are unnecessary. Further, for the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

EXECUTIVE ORDER 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

DRAFTING INFORMATION

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

AMENDMENT TO THE REGULATIONS

Accordingly, Part 4 of the Customs Regulations (19 CFR Part 4) is amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, and 46 U.S.C. App. 3;

* * * * * * *

§ 4.22 also issued under 46 U.S.C. App. 121, 122, 141;

* * * * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Tonga" in appropriate alphabetical order.

Dated: July 18, 1990.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, July 23, 1990 (55 FR 29840)]

19 CFR Part 10

(T.D. 90–61)

SUPPLIES AND EQUIPMENT FOR AIRCRAFT OF INDONESIA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Indonesia to the list of nations whose registered aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or Internal Revenue custody for use by aircraft in certain circumstances. The Department of Commerce has advised that the Government of Indonesia grants to American operators of U.S. registered aircraft substantially reciprocal exemptions from Customs duties and related taxes on aviation fuels and lubricants purchased for use in international commercial aviation into and out of Indonesia. Therefore, the U.S. will now extend reciprocal privileges to Indonesian-registered aircraft with the notation limiting the privileges to withdrawals of aviation fuels and lubricants.

EFFECTIVE DATE: The reciprocal privileges for aircraft registered in Indonesia became effective on April 4, 1990. This amendment is effective July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Entry Rulings Branch (202–566–5856).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal Revenue custody without the payment of Customs duties and/or Internal-Revenue taxes, for use as supplies (including equipment), ground equipment, or for maintenance, or repair of the aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States-registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those nations whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Services of the Department of Commerce, International Trade Administration, has determined and advised the Customs Service by letter dated April 4, 1990, that Indonesia accords aircraft of U.S. registry exemptions from Customs duties and related taxes

on aviation fuels and lubricants needed to support international commercial aviation into and out of Indonesia, in a manner that is substantially reciprocal to exemption privileges which the United States may provide under 19 U.S.C. 1309 and 1317, and under 26 U.S.C. 4221, for aviation fuels and lubricants for use by foreign registered aircraft operating into and out of the United States.

This finding became effective as of April 4, 1990. Therefore, § 10.59(f) is being amended to add Indonesia to the list of countries therein, with the notation, however, that the privileges are limited to withdrawals of aviation fuels and lubricants.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely announces the granting of an exemption for which there is a statutory basis pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not apply to any regulations such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

* * * * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended by adding "Indonesia" in appropriate alphabetical order in the column headed "Country", the number of this Treasury Decision in the column headed "Treasury Decision(s)", and in the column headed "Exceptions if any, as noted-" add the words "Applicable only as to aviation fuels and lubricants" opposite the listing for Indonesia.

Dated: July 18, 1990.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, July 23, 1990 (55 FR 29841)]

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19 CFR Part 4

(T.D. 90–62)

VESSELS IN FOREIGN AND DOMESTIC TRADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include the Cayman Islands in the lists of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. This amendment will provide reciprocal privileges for vessels of Cayman Islands registry.

Customs has been furnished with satisfactory evidence that the Cayman Islands places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country or any other ports under the jurisdiction of the United Kingdom.

EFFECTIVE DATES: The reciprocal privileges for vessels registered in the Cayman Islands became effective on March 5, 1990. This amendment is effective July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Carrier Rulings Branch (202–566–5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. Citizens. However, the 6th proviso of the Act, as amended, provides, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

In accordance with the Act, the Customs Service has listed in § 4.93(b)(1) of the Customs Regulations (19 CFR 4.93(b)(1)) those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, and shipping tanks; empty barges specifically designed for carriage aboard a vessel; empty instruments of international traffic; and certain stevedoring equipment and material, are listed in section 4.93(b)(2) of the Customs Regulations (19 CFR 4.93(b)(2)).

By letter dated March 5, 1990, accompanied by a copy of a communication from the British Embassy, the Department of State advised that the Cayman Islands places no restrictions on the transportation of the articles listed in the Act by vessels of the United States between ports in the Cayman Islands and any other ports under the jurisdiction of the United Kingdom.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

FINDING

On the basis of the information received from the Department of State and the British Embassy, it has been determined that the Cayman Islands places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), by vessels of the United States. Therefore, appropriate reciprocal privileges are accorded to vessels of Cayman Islands registry as of March 5, 1990.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

EXECUTIVE ORDER 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

DRAFTING INFORMATION

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, Cargo vessels, Coastwise trade, Maritime carriers, Vessels.

AMENDMENT TO THE CUSTOMS REGULATIONS

To reflect the reciprocal privileges granted to vessels registered in the Cayman Islands, Part 4, Customs Regulations (19 CFR Part 4), is amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3;

* * * * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * * * *

§ 4.93 [Amended]

2. Sections 4.93(b)(1) and (2) are amended by adding "The Cayman Islands and" before "Hong Kong" within the parentheses after "United Kingdom" in the lists of countries under those sections.

Dated: July 18, 1990.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, July 23, 1990 (55 FR 29839)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 13, 1990.

The following are abstracts of unpublished rulings recently issued by the U.S. Customs Service. The abstracts are set forth to provide interested parties with general information regarding the types of issues currently being addressed by the U.S. Customs Service. By their inclusion herein, the rulings abstracted shall not be considered "published in the Customs Bulletin," within the meaning of section 177.10 of the Customs Regulations (19 CFR 177.10), nor do such abstracts establish a uniform practice.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 90–82)

Abstracts of Unpublished Customs Service Decisions

COMMODITY CLASSIFICATION

C.S.D. 90–82(1)—*Commodity:* Contraceptive tablets. U.S. contraceptive tablets and the necessary packaging materials are shipped to the Dominican Republic for foreign packaging operations. *Classification:* The U.S. contraceptive tablets, compacts and other packaging materials will not be advanced in value or improved in condition abroad as a result of the foreign operations. They will qualify for the duty exemption under HTSUS subheading 9801.00.10, upon compliance with the documentary requirements of 19 CFR 10.1. *Document:* HQ 555559, dated April 20, 1990.

C.S.D. 90–82(2)—*Commodity:* Curtains. U.S. fabric, thread, plastic rings, metal hardware for a shade, and packaging materials are shipped abroad for assembly into various curtains. Columbian and Polish fabric from which pattern pieces are cut in the U.S. are included. The foreign operations that are common to all the curtain components include sewing of fabric; folding and sewing to form a rod pocket or ruffle; folding the curtain for packaging;

and packaging the curtain in a plastic bag. Other operations that are performed are merchandise specific. *Classification:* With the exception of the hand-tying of the fabric tube into a bow, the foreign operations performed to the curtains are considered proper assembly operations or operations incidental to the assembly process. The imported curtains may be entered under subheading 9802.00.80, HTSUS, with allowances in duty for the cost or value of the U.S. components incorporated therein, except for the fabric tube, upon compliance with the documentary requirements of 19 CFR 10.24. The cutting to length and width and hemming of foreign fabric in the U.S. to create curtain fabric pieces results in the substantial transformation of the fabric into products of the U.S. for purposes of this tariff provision. *Document:* HQ 555525, dated June 5, 1990.

C.S.D. 90–82(3)—*Commodity:* Drawstring pouch. The textile drawstring pouch is constructed of a cotton backed man-made fiber velour material, measures approximately 4 inches by 5 inches, and is embossed on one side. The immediate use of the pouch is to contain a miniature bottle of spirits. *Classification:* The liqueur and textile bag are classifiable under subheading 2208.90.4530, HTSUSA, which provides for undenatured ethyl alcohol * * *, other, cordials, liqueurs, kirschwasser and ratafia, in containers each holding not over 4 liters. *Document:* HQ 086611, dated May 17, 1990.

C.S.D. 90–82(4)—*Commodity:* Drill bits. U.S. origin drill bits are exported for reworking and/or assembly with plastic collars and packaging. *Classification:* If the plastic collars are of U.S. origin, they will qualify for a duty allowance under HTSUS subheading 9802.00.80, upon compliance with the documentary requirements of 19 CFR 10.24. The drill bits of U.S. origin that are exported for cleaning and assembly with plastic collars will be eligible for the partial duty exemption under HTSUS 9802.00.80, when returned to the U.S., as will the plastic collars, if they are of U.S. origin, because they are ready for assembly as exported. Again, assuming compliance with the documentary requirements of 19 CFR 10.24. The U.S. origin packaging materials are entitled to duty-free entry under HTSUS subheading 9801.00.10, assuming they are merely filled with their contents, upon compliance with the documentation requirements of 19 CFR 10.1. *Document:* HQ 555359, dated May 14, 1990.

C.S.D. 90–82(5)—*Commodity:* Electrical arc welding wire. U.S. produced steel wire rod in coils of 2,000–4,000 pounds will be shipped to Mexico for manufacture into two classes of electrical arc welding wire. *Classification:* The electrical arc welding wire will be eligible for the partial duty exemption under HTSUS 9802.00.60, when returned to the U.S., provided the documentary require-

ments of 19 CFR 10.9 are met. *Document:* HQ 555315, dated May 16, 1990.

C.S.D. 90–82(6)—*Commodity:* Skirts. U.S. components consisting of fabric cut into pattern pieces, zippers, buttons, thread, hem ribbon and interfacing are shipped to Costa Rica for assembly into pleated women's skirts. *Classification:* The operations performed abroad to create the pleated women's skirts are considered proper assembly operations or operations incidental to the assembly process. The imported pleated women's skirts may be entered under subheading 9802.00.80, HTSUS, with allowances in duty for the cost or value of the U.S. components incorporated therein upon compliance with the documentary requirements of 19 CFR 10.24. *Document:* HQ 555542, dated June 8, 1990.

C.S.D. 90–82(7)—*Commodity:* Slippers. A woman's slipper with an upper of man-made fibers, an elasticized topline strip, a two piece uncoated leather sole and a sponge rubber/plastic midsole. *Classification:* The slipper is classifiable in subheading 6404.20.20, HTSUS, which provides for footwear with outer soles of leather or composition leather and uppers of textile materials: not over 50 percent by weight of rubber or plastics and not over 50 percent by weight of textile materials and rubber or plastics with at least 10 percent by weight being rubber or plastics: valued not over $2.50/pair. Headquarters ruling letter 085182, dated October 23, 1989, is modified. *Document:* HQ 086030, dated May 22, 1990.

C.S.D. 90–82(8)—*Commodity:* Stainless steel trim. Stainless steel bars of U.S. origin are sent to Mexico where they will be sanded to remove pitting, cut to various lengths, buffed, bent to conform to the shape of a convertible top, and then holes will be punched in the bars. The bars are buffed again before they are returned to the U.S., where they will be attached to convertible tops as decorative trim. *Classification:* The foreign operations constitute a process of manufacture and not an alteration, within the meaning of subheading 9802.00.50, HTSUS. The stainless steel trim will not be eligible for the partial duty exemption available under this tariff provision when returned to the U.S. *Document:* HQ 555566, dated May 1, 1990.

C.S.D. 90–82(9)—*Commodity:* Starter switches. U.S.-made parts are shipped to Mexico for assembly with certain foreign parts to create starter solenoid switches. The switches provide electrical energy to starters on internal combustion engines of automobiles. *Classification:* The starter solenoid switches to be assembled in Mexico will be entitled to the partial duty exemption under HTSUS subheading 9802.00.80. *Document:* HQ 555533, dated June 4, 1990.

C.S.D. 90–82(10)—*Commodity:* Towels. U.S. components are assembled and processed into weighted beach towels in a Caribbean country. Assembly operations include cutting to length of proper-width cotton toweling; cutting to length of beaded lead pellets; sewing the cut-to-length beaded lead pellets to the edge of the cut-to-length towel; marking the individual towels with washing instructions and country of origin; attaching hangtags; and packaging the towel for retail sale. Additional operations performed abroad may include embroidering a logo, trademark or other identifying symbol onto the towel; and/or sewing a patch or small label onto the towel. *Classification:* Towels with an embroidered design applied abroad will not be entitled to the partial duty exemption under subheading 9802.00.80, HTSUS. If no embroidery is performed abroad, the towels may be entered under this tariff provision, with allowances in duty for the cost or value of the U.S. cotton toweling, beaded lead pellets, and patches or labels, upon compliance with the documentary requirements of 19 CFR 10.24. *Document:* HQ 555565, dated May 14, 1990.

U.S. Customs Service

General Notice

PERFORMANCE REVIEW BOARDS—APPOINTMENT OF MEMBERS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Loretta J. Goerlinger, Director, Office of Human Resources, U.S. Customs Service, Post Office Box 636, Washington, D.C. 20044; (202) 634–5270.

BACKGROUND

There are two Performance Review Boards in the U.S. Customs Service.

Performance Review Board 1:

The purpose of this Board is to review the performance appraisals of Senior Executives rated by the Commissioner and Deputy Commissioner. The members are:

Daniel R. Black, Associate Director, Office of Compliance Operations, Bureau of Alcohol, Tobacco & Firearms;
Stephen E. Garman, Deputy Director, U.S. Secret Service;
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), Department of Treasury; and
Charles F. Rinkevich, Director, Federal Law Enforcement Training Center.

Performance Review Board 2:

The purpose of this Board is to review the performance appraisals of all Senior Executives except those rated by the Commissioner or Deputy Commissioner. All are Assistant Commissioners or Regional Commissioners, of the U.S. Customs Service. The members are:

Assistant Commissioners:

Samuel H. Banks, Office of Commercial Operations;
John E. Hensley, Office of Enforcement;
James W. Shaver, Office of International Affairs;
Charles W. Winwood, Office of Inspection and Control;
Edward F. Kwas, Office of Management;
William F. Riley, Office of Information Management; and
George D. Heavey, Office of Internal Affairs.

Regional Commissioners:

Philip W. Spayd, Northeast Region;
Anthony N. Liberta, New York Region;
Richard G. McMullen, North Central Region;
George Corcoran, Southeast Region;
John R. Grimes, South Central Region;
James C. Piatt, Southwest Region; and
Quintin L. Villanueva, Pacific Region.

Dated: June 1, 1990.

CAROL HALLETT,
Commissioner of Customs.

[Published in the Federal Register, July 18, 1990 (55 FR 29013)]

U.S. Court of Appeals for the Federal Circuit

FIGURE FLATTERY, INC., PLAINTIFF-APPELLANT *v.*
UNITED STATES, DEFENDANT-APPELLEE

Appeal No. 90–1079

(Decided July 11, 1990)

Ned H. Marshak, Sharretts, Paley, Carter & Blauvelt, P.C., of New York, New York, argued for plaintiff-appellant. With him on the brief was *Gail T. Cumins*.

Saul Davis, Trial Attorney, International Trade Field Office, Department of Justice, of New York, New York, argued for defendant-appellee. With him on the brief were *Stuart M. Gerson*, Assistant Attorney General, *David M. Cohen*, Director and *Joseph I. Liebman*, Attorney in Charge.

Appealed from: U.S. Court of International Trade.
Judge AQUILINO.

Before NIES, *Chief Judge*, NEWMAN, *Circuit Judge*, and BROWNING,* *District Judge*.

PER CURIAM:

The decision of the United States Court of International Trade, *Figure Flattery, Inc.* v. *United States*, 720 F. Supp. 1008 (Ct. Int'l Trade 1989), is affirmed. We adopt that court's opinion.

AFFIRMED

*The Honorable William D. Browning, United States District Court for the District of Arizona, sitting by designation pursuant to 28 U.S.C. § 293(a).

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

James L. Watson
Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave

Senior Judges

Morgan Ford

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 90–64)

ROSES, INC., CALIFORNIA FLORAL TRADE COUNCIL, AND FLORAL TRADE COUNCIL, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, ANAPROMEX, DEFENDANT-INTERVENOR

Court No. 84–5–00632

[Remanded.]

(Decided July 3, 1990)

Stewart and Stewart, (*David Scott Nance* and *Geert De Prest* at the hearing, *Eugene Stewart, Terence P. Stewart* and *Geert De Prest* on the brief) for the plaintiffs.

Stewart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, (*Jeanne E. Davidson* at the hearing, *Sheila N. Ziff* on the brief), of counsel (*Andrea Dynes* at the hearing, *Gaylin Soponis* on the brief), Attorney Adviser, United States Department of Commerce, for the defendant.

Porter, Wright, Morris & Arthur, (*Leslie Alan Glick*) for the defendant-intervenor.

MEMORANDUM AND ORDER

RESTANI, *Judge*. Plaintiffs move for judgment on the administrative record of *Certain Fresh Cut Flowers From Mexico*, 49 Fed. Reg. 15007 (1984) (*Final Determination*). The International Trade Administration (ITA or Commerce) conducted this investigation under section 303 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1303 (1982), and determined that "no benefits that constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Mexico of fresh cut flowers, * * *" *Final Determination* at 15007.

Plaintiffs challenge this determination, claiming that ITA's finding that financing provided to Mexican flower growers did not constitute a bounty or grant because it was not provided to a specific enterprise or industry, or group of enterprises or industries, was not supported by substantial evidence in the record or was otherwise not in accordance with law.

BACKGROUND

On September 30, 1983, ITA received a petition from the California Floral Trade Council, Floral Trade Council, and Roses, Inc., filed on behalf of the United States industry producing fresh cut flowers. Administrative Record Document (A.R. Doc.) 1. The petition alleged that manufacturers, producers or exporters in Mexico of certain fresh cut flowers received, directly or indirectly, bounties or grants within the meaning of section 303 of the Act, including (1) exemption of import duties; (2) preferential long and short term financing, loan guarantees, and reimbursement to commercial banks funding technical services to flower growers, all through a government program called the Funds Established with Relationship to Agriculture (FIRA); (3) financing for investment credit through the Special Trust for Agricultural Finance (FEFA); (4) marketing services provided by the Instituto Mexicano de Comercio Exterior (IMCE); and (5) a state grant to the University of Floriculture which provides research and development and manpower training for the Mexican flower industry. *Id.*

Commerce found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and, on October 26, 1983, published its notice of *Initiation of Countervailing Duty Investigation; Certain Fresh Cut Flowers from Mexico,* 48 Fed. Reg. 49531 (1983). Commerce announced that, in addition to petitioner's allegations, it would investigate certain other Mexican programs previously found to confer bounties or grants. *Id.* Commerce also investigated an export subsidy allegation.[1] See *Postponement of Countervailing Duty Investigation; Certain Fresh Cut Flowers From Mexico,* 48 Fed. Reg. 55492 (1983).

On February 1, 1984, ITA published its *Certain Fresh Cut Flowers from Mexico; Preliminary Negative Countervailing Duty Determination,* 49 Fed. Reg. 4023 (1984). The notice stated that Commerce had preliminarily determined that one flower company, Florex S.P.R. (Florex), had received one FIRA loan during the period of investigation, that is, January 1, 1982 to September 30, 1983, and that ITA required more information on FIRA. The notice stated, in part:

> The government of Mexico stated that only one flower company received a loan through FIRA. The loan was granted to Florex S.P.R. in 1983 to enable it to purchase the assets of another company, Flores de Occidente. In order to determine whether benefits received under FIRA are countervailable, we need to determine whether FIRA benefits may be contingent upon exports and/or whether FIRA is targeted to a "specific enterprise or industry, or group of enterprises or industries" within Mexico as specified in section 771(5)(B) of the Act.

[1] Both "domestic" subsidies and subsidies given upon exportation may warrant the imposition of countervailing duties.

> In our 'Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico' (48 F.R. 21618), we stated that the agricultural sector constitutes more than a single group of industries within the meaning of the Act. According to information from the Mexican government, it appears that FIRA is available to a broad range of agricultural products, and possibly even for some non-agricultural enterprises. If this is the case, FIRA would not be countervailable based on our reasoning in *Fresh Asparagus*. Further, it does not appear that the Florex loan is targeted for exports. However, more information is needed on this program, because it is not clear from the response exactly what types of products are eligible to receive FIRA financing.

49 Fed. Reg. at 4023–24.

ITA preliminarily determined that all other programs which it investigated did not confer bounties or grants or were not used by producers or exporters of cut flowers. *Id.* at 4024–25.

Commerce then verified the following facts regarding the FIRA program in general. The Purpose of FIRA is to develop and support agriculture in Mexico and most support is to the small agricultural producer. A.R. Doc. 74 at 2. Of all credit granted by FIRA, 80.8% went to producers of basic food products and livestock (including grains, fruits, tomatoes, chilis, onions, lettuce, carrots, potatoes, beans, milk, meat, pork, cold cuts, sugar, oil, lard, corn, wheat, rice, eggs, cotton, honey, livestock, and bread), to fill the agricultural needs of the Mexican people. A.R. Doc. 74 at 2–3. The program for low income producers (i.e., peasant farmers who have not yet reached the basic subsistence level and who generally have no other source of income besides agricultural production) is the most important for FIRA. 33.9% of FIRA financing went to low income producers; smaller amounts went to producers in other income categories. A.R. Doc. 74 at 3–4.

In addition to support for basic foods, FIRA provides support for fishing and forestry industries, producers of agricultural tools, feed, and a variety of processed and canned products. A.R. Doc. 74 at 2. Only 8.6% of FIRA credit was used to finance exports. A.R. Doc. 74 at 3. All growers of flowers for export are in the highest income category under FIRA; this category received the smallest percentage of FIRA financing. A.R. Doc. 74 at 7. Of the producers and exporters of cut flowers subject to the Commerce investigation, only one company, Florex, received a FIRA loan during the period of investigation.[2] A.R. Doc. 74.

With regard to Florex, ITA verified that: In May of 1983, Florex received a FIRA loan of 70 million pesos to enable it to acquire another corporation. A.R. Doc. 74 at 9. The interest rate on the loan to Florex was approximately 60 percent because of FIRA participa-

[2]Prior to the hearing before ITA, and in their pre-hearing brief, petitioners argued that the Ornamental Horticulture Section of FIRA had provided "significant amounts of credit" to producers and exporters of fresh cut flowers in Mexico. A.R. Doc. at 1–2. Florex is a major exporter.

tion; absent FIRA participation, funding was to be at a higher rate. A.R. Doc. 74 at 9–10. *See also* A.R. Exhibit 7.

On April 16, 1984, Commerce published its *Final Determination.* ITA determined that 16 programs, either alleged by petitioners to confer bounties or grants or investigated as announced in the initiation, either were not used by Mexican flower growers or were suspended. Regarding FIRA, Commerce determined that its

> main objective * * * is to develop Mexico's agricultural sector. To meet this objective FIRA provides short- and long-term financing, loan guarantees, and technical support to firms involved in agricultural production. The Fund for Agricultural Finance (FEFA) and the Fund for Technical Assistance and Guarantee for Agriculture Credit (FEGA) are two of the principal funds which operate under FIRA. FEFA was created in August of 1965 and provides investment funding to producers. FEGA was created in December of 1972 and guarantees credits granted to low-income growers. FEGA also reimburses banks for technical services provided through the banks to growers. Two FIRA loans were outstanding during the period of investigation to cut flower producers exporting to the United States.
>
> FIRA does not confer an export bounty or grant because it does not operate, and is not intended, to stimulate export over domestic sales. Furthermore, it is not offered contingent upon export performance. In fact, most of FIRA's financing is given to producers who do not export. For FIRA to be considered a domestic bounty or grant, it must be "provided or required by government action to a specific enterprise or industry, or group of enterprises or industries" within Mexico as specified in section 771(5)(B) of the Act. In our *Final Negative Countervailing Duty Determination; Fresh Asparagus from Mexico* (48 F.R. 21618), we stated that the agricultural sector constitutes more than a single group of industries within the meaning of the Act. We reaffirm that decision made in *Fresh Asparagus.* Agriculture is more than a specific industry or group of industries. Producers of a wide variety of products including fruits and vegetables, livestock, grains, meat product, milk and eggs are eligible for FIRA financing. Producers of agricultural tools may also receive financing under FIRA. FIRA loans are also provided to the fishing and the forestry industries. Approximately one-third of Mexico's labor force is employed in agriculture. The FIRA program is generally available to, and used by, wide ranging and diverse industries that constitute a substantial portion of the Mexican economy. There is no evidence that producers or exporters of cut flowers subject to this investigation are a major beneficiary of FIRA. In addition, FIRA is not targeted to any specific region in Mexico.
>
> Accordingly, we determine that FIRA does not confer a bounty or grant on the production or exportation of Mexican fresh cut flowers, because FIRA loans are not targeted to exports, nor are they given to a "specific enterprise or industry, or group of enterprises or industries" within Mexico as specified in section 771(5)(B) of the Act.

Final Determination at 15008. ITA also stated that "even if we had determined that FIRA benefits were countervailable, the loans to the flower producers would confer a *de minimis* benefit." *Final Determination* at 15011.

Following the final determination, plaintiff Roses, Inc. commenced this action.[3] Defendant now agrees that if the program is countervailable, a reexamination must be made of the issues of the proper benchmark standard for determining whether the loans were made other than on a commercially acceptable basis and other issues relating to the quantification of the benefit bestowed. *See* Transcript of May 1, 1990 Oral Argument (TR) at 68. Because of ITA's non-countervailable ruling these issues were not addressed in depth. Thus, the court will not address such issues at this time.

Discussion

I. The Countervailing Duty Law.

As indicated, *supra*, at 2, the underlying petition in this matter was brought under section 303 of the Act.

According to that section:

> Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 1671(b) of this title),[4] whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imposed directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

19 U.S.C. § 1303(a)(1) (1982).[5]

According to section 771(5) of the Act, as amended, 19 U.S.C. § 1677(5) (1982):

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[3]The other plaintiffs were added by order of November 14, 1988, per Rao, J.

[4]19 U.S.C. § 1671(b) (1982) defines a country under the Agreement. At the time of this investigation Mexico was not a country under the agreement because it had not acceded to the GATT agreement covering subsidies or a similar agreement.

[5]Unlike actions brought under Title VII, section 701 of the Act, codified at 19 U.S.C. § 1671 (1982), actions brought under 19 U.S.C. § 1303 do not require a determination by the International Trade Commission of injury or threat of injury to a United States industry.

> The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 1303 of this title, and includes, but is not limited to, the following:
>
> (A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies),
>
> (B) The following domestic subsidies, *if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries,* whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:
>
> (i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations * * *.

[Emphasis added].

Section 303 of the Act does not define "bounty or grant." The parties originally disagreed as to whether the statutory language emphasized by the court, *supra*, was included in the definition of "subsidies," for the purposes of both section 303 and Title VII, or whether the underscored language modified an already complete definition of "subsidies," for the purposes of Title VII only. The court addressed this issue in *Carlisle Tire & Rubber Co.* v. *United States*, 5 CIT 229, 235, 564 F. Supp. 834, 839 (1983) and found no differences between the two provisions.[6] It appears settled in this court that Congress meant the underscored language to be part of the definition of "subsidies" generally and not simply to modify that concept for countries under the Agreement, i.e., those entitled to an injury determination. *PPG Industries, Inc.* v. *United States*, 11 CIT 344, 350, 662 F. Supp. 258, 264 (1987), *appeal pending* No. 88–1175 (CAFC).[7, 8]

ITA interprets the word "specific" in the underscored language as modifying both "enterprise or industry" and "group of enterprises or industries." It is unclear whether plaintiffs believe the word "specific" modifies "enterprise or industry," only. Presumably, they believe that Congress used the term "group of enterprises or industries" for the same reason that it used other broadening language in section 771(5), that is, to make sure that the statute had the widest possible scope. Such was the suggestion of the court in *Bethlehem Steel Corp.* v. *United States*, 7 CIT 339, 590 F. Supp. 1237 (1984).[9] In any case, plaintiffs disagree with the implications ITA has drawn from its construction. Neither *PPG* nor *Carlisle* directly disposes of the sentence construction issue, although they do so by

[6] In *Carlisle*, the court held that two accelerated depreciation programs under the corporation tax law of the Republic of Korea were not countervailable since they were generally available to all Korean industries. *Carlisle*, 5 CIT at 232–35, 564 F. Supp. at 838–39.

[7] *See also PPG Industries, Inc.* v. *United States*, 13 CIT ——, 712 F. Supp. 195 (1989).

[8] At oral argument on May 1, 1990, plaintiffs confirmed that they are not pressing the contrary view. TR at 107–08.

[9] In *Bethlehem*, as in *Carlisle*, the court held that generally available tax benefits, such as a deduction for employee training under the South African tax law, are not countervailable. The court's discussion on the countervailability of other hypothetical "generally available" programs is *dicta*. As the *Bethlehem* court stated, "[t]he result reached in this decision is in harmony with the result reached in *Carlisle* * * *." 7 CIT at 349, 590 F. Supp. at 1246.

implication. That is, they accept that specificity of some type is required. *PPG Industries,* 11 CIT at 350, 662 F. Supp. at 264; *Carlisle,* 5 CIT at 233, 564 F. Supp. at 838. The court remains of this view.

At the time of the investigation in this matter, Commerce adhered to a "general availability" rule,[10] by which ITA determined that benefits available to all enterprises or industries, or even to a large number of them, were not countervailable. This rule evolved from administrative interpretation of the phrase, discussed *supra,* "specific enterprise or industry, or group of enterprises or industries," and was adopted, at least in part, by the court in *Carlisle.* The court rejected a broad application of such a rule in *Bethlehem,* in *dicta,* and subsequently in *Agrexco, Agricultural Export Co., Ltd.* v. *United States,* 9 CIT 40, 604 F. Supp. 1238 (1985).[11] The court definitively rejected the "general availability" rule as applied by Commerce in *Cabot Corp.* v. *United States,* 9 CIT 489, 620 F. Supp. 722 (1985) (*Cabot I*), *appeal dismissed,* 788 F.2d 1539 (Fed. Cir. 1986). *See also Cabot Corp.* v. *United States,* 12 CIT ——, 694 F. Supp. 949 (1988) (*Cabot II*).

In the underlying investigation in *Cabot,* ITA determined that the Mexican government was providing carbon black feedstock, an ingredient in the production of carbon black which is used in the production of rubber and other products, to Mexican companies at subsidized prices. ITA determined, however, that this did not constitute a "bounty or grant" because this program was generally available to any Mexican enterprise. 9 CIT at 494, 620 F. Supp at 728–29. The court held, however, that while carbon black, in principle, was available to any Mexican industry at subsidized prices, it was in fact used by only one industry. The court stated that:

> Since the enactment of section 1303 courts have recognized that they must examine the actual results or effects of assistance provided by foreign governments and not the purposes or intentions * * *. Nor is section 1303 concerned with the nominal availability of a governmental program. The question is what aid or advantage has actually been received "regardless of whatever name or in whatever manner or form or for whatever purpose" the aid was provided.

9 CIT at 495, 620 F. Supp. at 730 [Citations omitted]. The court held that the "general availability" test was inappropriate and directed Commerce to apply a test which considered the program's actual effect. *Id.* According to the court,

> [t]he distinction that has evaded the ITA is that not all so-called generally available benefits are alike—some are benefits accruing generally to all citizens, while others are benefits that

[10] "General availability means that what is available is accessible to all who are similarly situated." *United States Steel Corp.* v. *United States,* 5 CIT 245, 255, 566 F. Supp. 1529, 1537 (1983).

[11] In remanding the investigation to ITA, the *Agrexco* court held, *inter alia,* that while benefits conferred by government research and development have not been found to be subsidies when "provided for a wide range of disciplines and projects," the mere fact that the results of the research are "disseminated to all growers and to the general public" does not mean that no subsidy exists if "the research and development is targeted to the production of roses." 9 CIT at 43, 604 F. Supp. at 1241–42.

> when actually conferred accrue to specific individuals or classes. Thus, while it is true that a generalized benefit provided by government, such as national defense, education or infrastructure, is not a countervailable bounty or grant, a generally available benefit—one that may be obtained by any and all enterprises or industries—may nevertheless accrue to specific recipients. General benefits are not conferred upon any specific individuals or classes, while generally *available* benefits, when actually bestowed, may constitute specific grants conferred upon specific identifiable entities, which would be subject to countervailing duties.

Id. at 497, 620 F. Supp. at 731. [Emphasis in original]. The court went on to say that:

> The appropriate standard focuses on the *de facto* case by case effect of benefits provided to recipients rather than on the nominal availability of benefits * * *. The definition of 'bounty or grant' under section 1303 as intended by Congress remains as it is embodied in the case law and later affirmed by Congress in section 1677(5). This definition requires focusing only on whether a benefit has been actually conferred on a 'specific enterprise or industry, or group of enterprises or industries.'

Id. at 498, 620 F. Supp. at 732.[12]

The above quoted passages, while general in tone, should not be read in support of the proposition that any benefit not "traditionally" provided by governments or all benefits directed specifically towards the business community are countervailable. *See PPG Industries* v. *United States, supra.* (Neither a government program which allowed all Mexican firms that incurred foreign debt within a certain time frame to purchase dollars at a controlled rate, nor a program that allowed all Mexican enterprises to purchase natural gas at a published price, which was below that at which Mexico sold it for export, was countervailable, because neither program benefitted a specific enterprise or industry, or group of enterprises or industries).[13]

The rationale of *Cabot I* has been codified by Congress in a "Special rule" added in the Omnibus Trade and Competitiveness Act of 1988. *See* House Committee on Ways and Means, Trade and International Economic Policy Reform Act of 1987, H. Rep. No. 40(I), 100th Cong., 1st Sess. 123 (1987) (to accompany H.R. 3).[14] The added section states:

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[12] *See also Cabot II*, 12 CIT at ——, 964 F. Supp. at 950 ("As was held in the *Cabot I* and *PPG* decisions, 'general availability' is not the prevailing standard under 19 U.S.C. § 1303 and 1677(5) (1982).")

[13] *But see Armco Inc.*, v. *United States*, 14 CIT ——, 733 F. Supp. 1514 (1990) (remanded for reconsideration; accelerated depreciation available to all industries in Malaysia was not non-countervailable merely because of its general availability). The *Armco* case relied on *Cabot I*, but did not discuss *PPG* and its progeny. A decision following remand has not been issued, so the final outcome is unknown.

[14] Much of the Omnibus Trade and Competitiveness Act of 1988 is derived from H.R. 3, a predecessor bill vetoed by the President. *See* 1988 U.S. Code Cong. & Admin. News 1547.

> In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program, or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

19 U.S.C. § 1677(5)(B) (1988).

The House Report makes clear that Congress intended merely to clarify the law, not to change it with the addition of the special rule. H. Rep. No. 40(I) at 123–24.[15] Moreover, the Report states that

> [t]he Court in *Cabot* provided a sound interpretive rule to be applied in those cases where broadly available benefits are at issue. *The test for such programs is whether there is a sufficient degree of competitive advantage in international commerce being bestowed upon a discrete class of beneficiaries that would not exist but for government action.* This necessarily involves subjective, case-by-case decisions to determine whether there is such a discrete class of beneficiaries. This advantage distinguishes general benefits (such as national defense or public education) from benefits that are properly countervailed.
>
> There are, for example, instances where a government provides an input product, such as a natural resource, to its industries in a manner that as actually conferred benefits a specific enterprise, industry, or group thereof. For example, if a government restricts access to a product such as natural gas and offers it for consumption at prices below free market rates, an artificial competitive advantage is provided to the consuming industries and such practice could be countervailable. *On the other hand, if the resource is freely available on a nondiscriminatory basis to all purchasers within a country without government restriction, such as Venezuelan natural gas, then a countervailable subsidy is not likely to exist.*

H. Report No. 40(I) at 124. [Emphasis added].

Congress has stated expressly that *Cabot* evinced what had always been the legislative intent behind section 303 of the Act. The court notes that while

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[15] *See also* H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 587, *reprinted in* 1988 U.S. Code Cong. & Admin. News 1547, 1620, which states that "[t]he House bill *clarifies* the application of the countervailing duty law to domestic subsidies by requiring that the Commerce Department base its determination on whether a particular subsidy is in fact bestowed upon a specific industry or group of industries or instead is bestowed upon industries in general." [Emphasis added].

Senate Committee on Finance, Omnibus Trade Act of 1987. S. Rep. No. 71, 100th Cong., 1st Sess. 19 (1987) (to accompany S. 490) states:

> (13) *Determination of Subsidies.*—The Committee bill adds a special rule to the definition of a subsidy under current law to *clarify* that the Commerce Department must determine whether a bounty[,] grant, or subsidy in fact is provided to a specific industry rather than finding a nominal availability of the subsidy to all industries as a basis for determining that the subsidy is not provided to a specific industry.

[Emphasis added].

> [i]t is true that the views of a subsequent Congress cannot override the unmistakable intent of the enacting one * * * and form a hazardous basis for inferring the intent of an earlier one * * * [s]uch views are entitled to some weight, particularly when the precise intent of the enacting Congress is obscure.

Carlisle Tire and Rubber Co. v. *United States*, 5 CIT 229, 235, 564 F. Supp. 834, 839 (1983). [Citations omitted]. It is now generally accepted in this court that

> 'general availability is not the statutory test. It is merely one of several relevant factors to be considered in determining whether or not a benefit or competitive advantage has been conferred upon a "specific enterprise or industry, or group of enterprises or industries." '

Comeau Seafoods Ltd. v. *United States*, 13 CIT ——, 724 F. Supp. 1407, 1414 (1989) (*quoting Alberta Pork Producers' Mktg. Bd.* v. *United States*, 11 CIT 563, 567, 669 F. Supp. 445, 450 (1987) (*quoting PPG*, 11 CIT at 352, 662 F. Supp. at 265)). In *Alberta Pork*, the court upheld ITA's determination that Canadian hog growers received countervailable benefits. Plaintiffs in that case argued that these benefits could "potentially be disbursed toward an even greater range of products * * *." 11 CIT at 468, 669 F. Supp. at 451. The court, however, found that

> [w]hile general availability is a relevant factor in determining whether benefits are countervailable under Section 1677(5)(B), *See PPG Industries, supra*, the [program] discriminates between commodities by providing pre-authorized, regular payments to producers of [certain] commodities, while offering unpredictable benefits to others who may apply for designation under the [program].

Id.

In *Comeau Seafoods, supra*, the court upheld ITA's determination that Canadian ground fish producers received countervailable benefits through the Canadian Economic and Regional Development Agreements program, which was "implemented through subsidiary agreements between the federal and individual provincial governments." 13 CIT at ——, 724 F. Supp. at 1415. Plaintiffs there claimed that ITA erred in examining a specific agreement rather than the entire national program. The court, however, found that

> [w]here the terms of [a] program do not appear to be limited to a specific group of enterprises or industries, it may still be countervailable if its benefits are, in practice, bestowed upon a specific group of enterprises or industries.

Id. (*quoting IPSCO, Inc.* v. *United States*, 12 CIT ——, 687 F. Supp. 614, 632 (1988) (*citing PPG*, 11 CIT at 352, 662 F. Supp. at 265)).

In *Can-Am Corp.* v. *United States*, 11 CIT 424, 664 F. Supp. 1444 (1987), the court gave a clear explanation of its interpretation of the countervailing duty law. In that case, plaintiffs claimed that, under *Cabot*, Mexican lime producers received countervailable benefits through a program that provided all Mexican enterprises with oil at prices below what it was sold for in export. The court, however, found

> that plaintiffs' interpretation of the test prescribed in *Cabot* for determining a domestic bounty or grant under section 1303 is in error. In *PPG Industries* v. *United States*, [11 CIT 344, 662 F. Supp. 258 (1987)], Judge Carman who decided *Cabot* confronted a similar claim involving the provision of natural gas to the Mexican float glass industry. The plaintiffs in *PPG Industries* argued that the provision of natural gas at far below world market prices conferred a countervailable benefit because such price differential resulted in an enormous cost advantage to Mexican float glass producers and exporters vis-a-vis producers and exporters in other countries. *PPG Industries*, [11 CIT at 361, 662 F. Supp. at 272].
>
> The *PPG Industries* Court first explained that section 1303 which employs the phrase 'bounty or grant' provides the substantive law where, as in this case, the country involved in the investigation is not a 'country under the Agreement' within the meaning of section 701(b) of the Act, as amended, 19 U.S.C. § 1671(b) (1982). The court concluded, however, that Commerce, as it did in this case, may rely upon the general countervailing duty provisions of section 701 of the Act, as amended, 19 U.S.C. § 1671, governing investigations of countries under the Agreement within the meaning of section 1671(b), which employs the term 'subsidy' defined in section 771(5) of the Act, as amended, 19 U.S.C. § 1677(5) (1982) because the two provisions are legally interchangeable. *PPG Industries*, at [350–51, 662 F. Supp. at 264].
>
> The *PPG Industries* Court accepted Commerce's finding that 'the existence of a price differential between export and domestic sales of natural gas, or between domestic and "world market" prices does not, in and of itself, confer a bounty or grant,' stating that 'it is well established that the mere existence of a price differential between exported and domestic prices, does not in and of itself confer a bounty or grant under § 1303.' *PPG Industries*, at [362, 662 F. Supp. at 272] (citing *United States* v. *Zenith Radio Corp.*, 64 CCPA 130, 138, C.A.D. 1195, 562 F.2d 1209, 1216 (Fed. Cir. 1977), *aff'd*, 437 U.S. 443, for its proposition that 'Congress has not statutorily required that every governmental action distinguishing between products consumed at home and those exported shall be deemed the bestowing of a bounty or grant'). The court stated that the appropriate standard or test requires Commerce to conduct a *de facto* case by case analysis to determine whether or not a program provides a 'subsidy' or a 'bounty or grant' to a 'specific enterprise or industry, or group of enterprises or industries.' The *PPG Industries* Court held that Commerce properly refused to countervail

against the natural gas pricing program since the float glass companies under investigation paid the published price for natural gas and the gas was actually available to all Mexican industries at that price.

11 CIT at 427–28, 664 F. Supp. at 1448.[16]

II. THE COUNTERVAILING DUTY LAW WITH REGARD TO DOMESTIC SUBSIDIES APPLIED TO THIS INVESTIGATION.

As explained, "[d]ecisions of this court require Commerce to conduct a *de facto* case by case analysis to determine whether a program provides a subsidy, or a bounty or grant, to 'a specific enterprise or industry or group of enterprises or industries * * *.'" *Saudi Iron and Steel Co. (Hadeed)* v. *United States*, 11 CIT 880, 884, 675 F. Supp. 1362, 1367 (1987) (*citing, inter alia, PPG*).

Therefore, the appropriate test in the current investigation should have been whether a competitive advantage *in fact* was bestowed on a specific enterprise or industry, or a group thereof, by the program at issue. Thus, the general availability rule under which ITA conducted the investigation was flawed. This would not in and of itself require a remand were the court convinced that the application of a flawed legal test had led to harmless error. In this case, however, the court believes that further consideration by ITA is required.

Because ITA did not apply the proper standard the dispute in this case boils down to the question of whether a determination that flower growers did not receive loans that were part of a program targeted to a specific enterprise or industry, or group of enterprises or industries, is the only fair conclusion from this record.[17] If more than one conclusion may be drawn from the record the agency must reconsider its decision under the proper legal standard.

The FIRA program differs from the Mexican natural gas program in *PPG* and the Venezuelan natural gas program described in the House Report. Those programs provided a natural resource at subsidized prices to all enterprises and industries in their respective economies on a nondiscriminatory basis. FIRA, on the other hand, provided loans only to the agricultural sector which, though large, is still a discrete and possibly shrinking part of the Mexican economy.

The limited number of enterprises which could apply for FIRA loans may make the program somewhat more similar to the FICORCA program found to be noncountervailable in *PPG*. The FICORCA program, however, offered dollars at a fixed rate to all enterprises which had incurred foreign debt within a certain time period. The

[16] *See also A1 Tech Specialty Steel Corp.* v. *United States*, 11 CIT 372, 380, 661 F. Supp. 1206, 1213, (1987) (benefits of Spanish bankruptcy law, available to all Spanish enterprises, are not countervailable because they are not given to "a discrete class of beneficiaries") (*citing PPG*, 11 CIT at 353, 662 F. Supp. at 266).

[17] The substantial evidence standard is relevant if the agency is applying the law correctly. The court will uphold a determination of ITA with regard to the unfair trade law unless the decision is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988).

qualifying enterprises were probably wholly unrelated. Moreover, it appears that there was no discretion allowed to Mexican government officials in providing benefits under the FICORCA program. Any Mexican enterprise with foreign debt during the relevant time period had the right to purchase dollars at a published price. FIRA, on the other hand, seems discretionary by its nature. The FIRA loan at issue here was made to allow Florex to purchase the assets of another flower company ostensibly to protect local jobs. Such a loan program appears different in kind from programs that supply resources to enterprises on a clear nondiscretionary basis. Other evidence in the record also indicates that the Mexican government considers certain types of projects for FIRA financing on a case by case basis. A.R. Doc. 28, attachment "Que es Fira", at 7–9.

Furthermore, the record indicates that historically, growers of cut flowers received little help from FIRA, but that this pattern changed with the creation of a new section in the program's administration.

> As a result of the promotions carried out by different organizations for the development of commercial species producing cut flowers, ornamental plants and foliage, together with the quantity of important applications of credit that were received in the Technical Offices of the FIRA, * * * the Directive (sic) of the FIRA considered it convenient to approve the creation of the Section of Ornamental Horticulture on March 28, 1977 * * *.

Report of the Bank of Mexico on the Participation of FIRA in Support of the Ornamental Horticulture. A.R. Doc. 1, Exhibit 1, at 54. The record indicates that the creation of the new section was motivated by policy concerns of the Mexican government.

> As was mentioned previously, the ornamental horticulture in our country is limited, principally due to the fact that the production obtained is destined to the national market. Nonetheless, there exist (sic) the security that with the adequate management of the existing natural resources, the employment of advanced techniques in the production and the efficient commercialization, this activity may become an important one, especially in the exportation field; one cannot forget the proximity of the American market, which is a large consumer of flowers and plants for ornament, mostly supplied by Colombia.

Id. at 43. The report goes on to say that

> [t]he principal objective in the Section of Ornamental Horticulture is: promote and improve the production of ornamental plants, fresh flowers and foliage, taking advantage of land-climate-water resources, for the creation of permanent sources of employment in the rural environment and for the *acquisition of foreign currency.*

Id. at 54. [Emphasis added].

Presently, the negative *export* subsidy determination of ITA regarding FIRA is not challenged. Nonetheless, the effect of the FIRA program on international commerce should be considered in making the domestic subsidy determination. *See* H.R. Report No. 40(I) at 124.

Apparently, Commerce focused on FIRA as a whole rather than on the Section for ornamental horticulture. Defendant-intervenor claims that this was reasonable because the creation of the section was "nothing more than administrative convenience and [did] not in any way affect the general availability and non preferential nature of the program." *Intervenor's Response and Opposition to Plaintiff's Motion for Review upon the Agency Record* at 15. As discussed, *supra*, ITA's previous general availability test is flawed, and "administrative convenience" here seems rather to reflect the governmental discretion involved in FIRA, with different administrative sections operating pursuant to different policy goals.[18] Programs bestowing benefits on different enterprises or industries for different policy reasons should not escape countervailability simply because the programs are loosely grouped under one heading, here FIRA.

Finally, ITA's present investigation differs from that in *Final Negative Countervailing Duty Determination; Fresh Asparagus From Mexico*, 48 Fed. Reg. 21618 (1983). In that investigation, Commerce determined that a FIRA program which provided low cost water for agricultural enterprises in certain areas of Mexico was not countervailable. That program was non-discretionary, at least at the district level, and was not directed to any particular kind of agriculture. *Id.* at 21621.

The court notes that since its original determination here, ITA has developed a "specificity test." Under that test

> [ITA] typically consider[s] three factors when making this determination: (1) the extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available.

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Malaysia, 53 Fed. Reg. 13303, 13304 (1988).[19] The appropriateness of this test is not directly before the court, and such a test may or may not answer the concerns raised here, depending on how it is applied. If the test is

[18]The court does not mean to imply that the intent of the government is the controlling factor. It is the actual functioning of the program which controls.

[19]This determination underlies the decision to remand in *Armco*, discussed *supra* at n.13. The court in *Armco* rejected this specificity test.

applied mechanically, it may fail to address the relevant issues. In deciding whether a countervailable domestic subsidy has been provided ITA must always focus on whether an advantage in international commerce has been bestowed on a discrete class of grantees despite nominal availability, program grouping, or the absolute number of grantee companies or "industries."

CONCLUSIONS

The court remands this case to ITA to make a new determination. ITA is to replace its flawed "general availability" test with a test which is consistent with the statute and which will determine whether or not the Mexican flower industry, during the period of investigation, received benefits, bestowed on a discrete class, which gave it a comparative advantage in international commerce. ITA shall perform such further investigation as is necessary and shall give the parties an opportunity to comment on its new approach. ITA shall report the results of its determination to the court within ninety days of this order.

(Slip Op. 90–65)

OUTLET BOOK CO., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 85–01–00012

[Customs classification of the subject merchandise under item 274.60 is reversed. Proper classification is item 270.25.]

(Dated July 6, 1990)

White & Case (*David S. Klafter* and *Mark de Gennaro*) for the plaintiff.

Stuart M. Gerson, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Al J. Daniel, Jr.*) for the defendant.

OPINION AND JUDGMENT

CARMAN, *Judge:* Plaintiff Outlet Books contests the denial of a protest filed under sections 514, 515(a) of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1514, 1515(a) (1988). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(a) (1988). The Court holds that the United States Customs Service (hereinafter Customs) improperly classified the subject merchandise as item 274.60 (1984), Tariff Schedules of the United States (hereinafter TSUS) "Lithographs on paper: Not over 0.020 inch in thickness * * * Other" and finds the correct classification to be TSUS item 270.25 (1984) "Books not specially provided for."

BACKGROUND

Plaintiff is a New York corporation engaged in the business of publishing books, including art and pictorial books containing considerable graphic or pictorial content. In April and May of 1984, plaintiff imported the following shipments of bound, hardcover publications: *Boston: A Picture Book to Remember Her By, Boy George and Culture Club, The Story of Prince Charles, Landscapes of America* (hereinafter *Landscapes),* and *Michael Jackson.*

Customs initially classified all of the above-mentioned titles as "Lithographs on paper: Not over 0.020 inch in thickness * * * Other" item 274.60, at a rate of 6 cents per pound. Customs subsequently reclassified all of the publications, with the exception of *Landscapes,* as "Books not specially provided for," TSUS item 270.25, at a free duty rate.

Landscapes consists of twelve pages of text followed by 288 pages of photographs with captions and fourteen pages entitled "List of Plates" describing and consecutively numbering each photograph to match the page upon which the photo appeared.

Prior to the commencement of this action, plaintiff's protest of Custom's classification was denied and plaintiff paid all liquidated duties, charges or exactions, (totalling $12,315.42).

CONTENTIONS OF THE PARTIES

Plaintiff contends that *Landscapes* should be reclassified as a "Book not specially provided for" under TSUS item 270.25 at a free duty rate and claims a refund of duties paid, with interest. In addition, plaintiff requests a declaratory judgment: (1) interpreting the TSUS provisions at issue, (2) declaring that the provisions mandate duty-free importation of all books regardless of their pictorial content, and (3) enjoining Customs to apply the tariffs according to the Court's declaration.

Defendant contends that the present classification is correct because *Landscapes* is a bound volume consisting overwhelmingly of pictorial matter. Defendant further contends that the rule of relative specificity requires classification under TSUS item 274.60 because it is more specific than the basket provision 270.25. If these two classifications were found to be equally applicable, defendant claims that, in accordance with General Interpretive Rules 10(c) and (d), the merchandise should be classified under the item that has the higher rate of duty. That classification would be TSUS item 274.60.

In the alternative, defendant suggests classification under TSUS item 274.75 (1984) "Printed on paper in whole or in part by a lithographic process: Not over 0.020 inch thick" at a rate of 2 cents per pound.

DISCUSSION

The headnotes to Schedule 2, Part 5, state in pertinent part:

> 1. Except for decalcomanias, labels, flaps, and bands, all of which are covered by the provisions therefor in this part, regardless of the nature of the printing thereon, this part covers only printed matter consisting essentially of textual or pictorial matter produced by any printing process, and similar matter in manuscript or typewritten form. The text may be set forth in any language by means of any kind of characters. With the exceptions above indicated, this part does not cover any article in which printing is merely incidental to the primary use of the article or in which printing is employed mainly for coloration or to produce a decorative or novelty effect * * *.
>
> 2. For the purposes of this part—
>
> * * * * * * *
>
> (b) the term "*books*" includes books, bound and not bound, and pamphlets;

Schedule 2, Part 5, headnotes 1 and 2.

It is uncontested by defendant that *Landscapes* "[i]n form, content, binding, appearance, and use, * * * meet[s] all criteria for the generic term 'book' as it is universally understood, and [it is] in fact [a] book[ ]." Pretrial Order, Schedule C, Uncontested are the following facts:

> 7. A lithograph is produced by making multiple direct impressions of solid colors from a single, flat plate of a material such as linoleum, wood, stone or metal. The original works reproduced in the books are photographs.
>
> 8. The term "lithograph" is commonly understood to mean, among other things, a work of fine art, such as a print, suitable for framing and display on a wall, often produced in a limited edition and signed and numbered by the artist.
>
> 9. Copies of the book *Landscapes of America* were produced by offset printing. In offset printing, separate photographic plates are made for each color. The image for each color is transferred to a round, rubber-blanketed cylinder, and then transferred to the paper. Non-primary colors are produced by printing dots of primary colors in close proximity so that an illusion of a mixed color is created. Offset printing is a mass medium.
>
> 10. Lithography is a general term which includes, among other things, the printing processes described in paragraph 7, 8 and 9.
>
> 11. Most commercially available books are produced by offset printing, regardless of the relative amounts of textual and pictorial matter in the books.

Id. at ¶¶7–11.

Classification of Books:

In determining whether or not merchandise may be classified as a book, the Court first turns to the discussion of books in *Los Angeles Tile Jobbers, Inc.* v. *United States*, 63 Cust. Ct. 398, C.D. 3925 (1969). In *Los Angeles Tile Jobbers*, the Customs Court considered the classification of "six separate sheets of paper, imported in bulk and invoiced as printed brochures, each of which contain[ed] one or more illustrations of floor or wall tiles." 63 Cust. Ct. at 399. The court in *Los Angeles Tile Jobbers* began its discussion with the case of *United States* v. *Field & Co.*, 14 Ct. Cust. Appls. 376, T.D. 42,031 (1927). In *Los Angeles Tile Jobbers*, the court stated that in *Field & Co.*,

> the court indicated that in order to qualify as a book under that part of paragraph 1310 [which, as far as relevant to the *Los Angeles Tile Jobbers* case, was identical to paragraph 1410 of the Tariff Act of 1930 which covered "books * * * not specially provided for" of bona fide foreign authorship] claimed by plaintiff, the article had to be susceptible of authorship. The court also quoted Webster's dictionary definition of "author" as "one who composes or writes a book, as composer as distinguished from an editor, translator, or compiler."

Los Angeles Tile Jobbers, 63 Cust. Ct. at 402.

The court in *Los Angeles Tile Jobbers* continued its discussion of book classifications by turning to *United States* v. *American Railway Express Co.*, 17 CCPA 10, T.D. 43,317 (1929). In that case, the Court of Customs and Patent Appeals distinguished *American Railway* from *Field & Co.* since the merchandise in *American Railway*, (travel brochures issued by the Canadian National Railway) required "mental effort and ability to prepare." *Los Angeles Tile Jobbers*, 63 Cust. Ct. at 403. The travel publications "describ[ed] localities accessible through the use of the railway and [g]ave details concerning such subjects as fishing, hunting, camping, hotels and resorts. Some had many illustrations and contained several hundred pages of reading matter while others were smaller and contained only lists of resorts, time tables and similar information." *Id.* Plaintiff in *American Railway* contended that the merchandise should have been classified as printed matter of bona fide foreign authorship under paragraph 1310 of the Tariff Act of 1922. The Court of Customs and Patent Appeals agreed stating:

> Accepting the definition as thus given of an author, as "one who composes or writes a book, a composer as distinguished from an editor, translator, or compiler," it is evident to the court that the exhibits before us are susceptible of authorship. It would be a work of superogation for us now to attempt to describe each exhibit individually, and to point out wherein authorship is manifest. It is sufficient to say that the exhibits are full of descriptive historical and geographical matter, and such matter as required mental effort and ability to prepare.

Id. (quoting *American Railway*, 17 CCPA at 14).

The Florence Agreement:

The Agreement on the Importation of Educational, Scientific and Cultural Materials (commonly known as the Florence Agreement) was sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and adopted by the General Counsel of UNESCO at Florence in 1950. Agreement on the Importation of Educational, Scientific and Cultural Materials, *opened for signature* Nov. 22, 1950, 17 U.S.T. 1835, T.I.A.S. No. 6129 (1966). Its major purpose was "to make it easier to import educational, scientific and cultural materials." *A Guide to the Operation of the Agreement on the Importation of Educational, Scientific and Cultural Material,* UNESCO, 1969 at 5 (Plaintiff's Exhibit 6). "The central feature of the Agreement is exemption from customs duties" and the "exemption extended to books is not subject to any qualification as to their educational, scientific or cultural character." *Id.* at 7, 10.

To implement the Florence Agreement, Congress enacted the Educational, Scientific, and Cultural Materials Importation Act of 1966, Pub. L. 89–651, 80 Stat. 897 (1966), which eliminated TSUS items 270.15–270.40 from the Tariff Schedules.[1] New item 270.25 was created for "Books not specially provided for" admitted duty-free. 80 Stat. at 897. Congress also modified item 270.45 by deleting the article description pertaining to books not specially provided for "*consisting essentially of textual matter*" and inserted in lieu thereof language relating to printed catalogs. *Id.* (emphasis added). Plaintiff notes that item 270.25 does not include the restriction "consisting essentially of textual matter" and that the Florence Agreement makes no distinction based upon the proportion of text versus pictures.

At trial, Carl Abramowitz, national import specialist in pulp, paper and printed matter, was asked whether the "essentially textual" standard had been used after 1967, in spite of the changes made due to the Florence Agreement. He responded:

> I recall that there was a decision in 1979 by the Headquarters' office which read in part that the provision for books not specially provided for in 270.25 covers only such books which consist essentially of textual matter.
>
> That seems to have reinstated the language which the Congress had dropped out. And from that date, for some years, we were looking at books to see if they were essentially textual or not, because we had been instructed to do so, in fact.

Trial Transcript at 66.

[1]The following TSUS items were eliminated by Pub. L. 89-651:

270.15	Books printed wholly or chiefly in languages other than English	Free
270.20	Books (except books described in item 270.15) which when imported have been printed over 20 years	Free
270.30	Bibles, comprising the books of the Old or New Testament or both	Free
270.35	Prayer books not covered by any of the foregoing provisions of this part	2% *ad val.*, 25% *ad val.*
270.40	Picture books (not including toy books), with an accompanying text printed in any language, suitable for the use of children not over 6 years of age	7.5% *ad val.*, 15% *ad val.*

TSUS Schedule 2, Part 5 (1965); *see* 80 Stat. at 897.

Customs issued a March 1986 Memorandum by the Director of the Classification and Value Division to the District Director of Customs, Seattle, Washington, which discussed the application of the Florence Agreement. The merchandise in question was a volume entitled *States of War,* which was a bound compilation of a one-page acknowledgment, a one-page forward, a ten-page unsigned introduction and forty-four lithographs. The memorandum read in pertinent part:

> Attached for your information and future guidance are Protest Review Decision, dated May 5, 1983 (072090), and our letter of August 20, 1985 (076794). You will note that the "essentially textual" criteria which had traditionally governed classifications in item 270.25, TSUS, and to which we alluded in our October 18, 1985, memorandum, was effectively repealed by the Florence Agreement, 17 U.S.T. 1835, T.I.A.S. No. 6129 (1966), and no longer represents Customs [sic] position in such matters. The Florence Agreement amendments essentially expanded the scope of the basket provision for books, in item 270.25, TSUS. As indicated in our August 20 decision," * * * the Florence Agreement implementation has expanded the provision for books to include articles which are 'less than essentially textual' and which are pictorial." * * * Thus, the real issue here is whether, despite the obvious pictorial content in *States of War,* the textual content may be viewed as more than incidental, thus warranting classification as a book. Because of the nature of the involved tariff provisions, particularly in view of the expanded scope of the provision for books in item 270.25, TSUS, Customs officers in the future will be required to make this determination on a case-by-case basis.
>
> We have previously held that captions and indexes do not normally control classification * * *. The 63 page compilation *States of War* depicts 44 lithographs which, standing alone, are difficult to interpret, at best. The unsigned introduction defines the various styles and techniques of many of the artists, and contains pointed interpretations of many of the lithographs, the emotions, social statements, and complexities of life in general each artist is attempting to depict. It is our opinion that the introduction in this instance is more than an incidental feature and that there is sufficient thematic integration of the text to warrant classification under the provision for books, not specially provided for, in item 270.25, TSUS * * *.

Plaintiff's Exhibit 11 at 1–2.

Classification of Books in 1984:

Plaintiff cotends that there is no predictable standard for determining whether merchandise is classified as a book. At trial, plaintiff's manager of copyrights testified that *Landscapes* had been imported at times without any duty being charged at all. National import specialist Carl Abramowitz testified that if the pages of

Landscapes had come in unbound, they would have been classified as duty-free under TSUS item 960.40 (1984) ("Loose illustrations, production proofs or reproduction films used for the production of books * * *").

Abramowitz also testified regarding what standard is used today for deciding whether books are classified under 270.25 or 274.60. The following colloquy transpired:

A. Well, up until December 30th, December 31st [1988], [prior to the Harmonized Code] we would look at a book and ask ourselves whether this is essentially a collection of pictures or if it is something more than that. If it were essentially a collection of pictures and if it were imprinted by a lithographic process, we would classify it in 274.60.

Q. How do you know if something is essentially a collection of pictures, what factors would you consider?

A. Well, certainly the number of pictures, the relative space occupied on the pages by the pictures.

* * * * * * *

Q. Is there some percentage of the space in a book that will have to be taken up with pictures to be considered essentially pictures?

A. I don't think so at this time. When I say "at this time," I mean up until the end of 1988 * * *.

No, recently, at this time there is no percentage number that we use.

Q. Was there a square inch number, was there any objective factor you could look at?

A. Not under present guidelines, no, sir.

* * * * * * *

Q. What other factors, if there were any, would you consider? You have mentioned [the] number of pictures and the space.

A. I would like for the presence or absence of text. If text was present, I would look to see how much of it was there and what its function was in the work.

* * * * * * *

Q. What were those rationales or guidelines that [headquarters] used, or did you subjectively * * * determine whether you had a collection of lithographs or a book?

A. One of the guidelines, sir, was the statement that if the text in a book merely describes the pictures, we were to consider the book a collection of pictures. On the other hand, if the pictures illustrate the text, then it was an essentially textual book and should be classified as a book.

* * * * * * *

Q. What do you consider to be the test now as far as if this is a book or is not a book?

A. If the work has an overwhelming preponderance of pictures such as that one can say it is a collection of pictures within covers, I would classify it within 274.60. If the book, on the other hand, had sufficient text which went throughout the book and interweaved with the pictures, particularly if the pictures could somehow be construed as being illustrative of the text, I would classify it as a book in 270.25.

Q. This is * * * your subjective point of view?

A. Yes, sir.

Trial Transcript at 59–75.

In order to succeed in this action, plaintiff must overcome the statutory presumption of correctness of the government's classification of the merchandise under 28 U.S.C. 2639(a)(1) (1988). *See also Jarvis Clark Co.* v. *United States,* 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878, *reh'g denied,* 2 Fed. Cir. (T) 97, 739 F.2d 628 (1984). The Court holds that plaintiff has overcome this presumption, and that the merchandise in question is a book. Plaintiff has demonstrated that mental effort as described in *American Railway* has gone into the preparation of this publication, and, that as in *States of War,* the introduction is "more than an incidental feature" of this volume. In examining *Landscapes,* the Court notes that the first sixteen pages of text set the tone for the volume since the author outlined the history of the parks service and the exploration of America by pioneers as well as naturalists. The photographs that follow depicted the national parks, and a variety of nature scenes including panoramas of mountains, oceans, rivers, forests, bridges and monuments. Although there are many plates, the sequence of photographs combined with descriptive captions and the introductory text make this publication more than a mere collection of lithographs.

Defendant makes much of the fact that the author of the text did not see the photographs before writing his introduction. The author did testify that he was hired to write approximately 20,000 words "which would illustrate the theme, 'Landscapes of America.' " Trial Transcript at 85. The national import specialist testified that the customs official who classified the merchandise would not consider who the author of the text was. There was no testimony as to whether or not the customs official was interested in the author's role of selecting the plates or describing them. The customs official, according to the import specialist, was looking at whether the text described the pictures or the pictures illustrated the text.

Alternate Classification

Defendant contends that a possible alternative classification for the merchandise may be TSUS item 274.75 "Printed matter not specially provided * * * Other: Printed on paper in whole or in part by a lithographic process: Not over 0.020 inch thick" at a rate of two

cents per pound. Defendant claims that this alternate classification might be appropriate because the merchandise is "printed matter" and was printed "by a lithographic process."

Since the Court has determined that the "printed matter" in question is a book and properly classified under TSUS item 270.25 as "Books not specially provided for" the Court need not address this claim.

Relative Specificity

General Interpretive Rule 10(c) requires that "an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it * * *." Defendant contends that TSUS item 274.60 "Lithographs on paper" is a more specific description of *Landscapes* and that it contains more difficult criteria to meet than item 270.25 "Books not specially provided for."

The Court has determined that *Landscapes* is properly classified as a book and that *Landscapes* is described only under TSUS item 270.25. Therefore, the rule of relative specificity does not apply.

Defendant also points to General Interpretive Rule 10(d) which requires that when merchandise may be classified under two or more provisions, "such article shall be subject to duty under the description for which the original statutory rate is highest * * *." The Court holds that the merchandise in question may only be classified under TSUS item 270.25 "Books not specially provided for." Since there is no other suitable classification, General Interpretive Rule 10(d) does not apply.

Declaratory Judgment

Plaintiff requests a declaratory judgment which would (1) interpret the TSUS item provisions at issue, (2) declare that these provisions mandate duty-free importation of all books regardless of their pictorial content, and (3) enjoin Customs to apply the tariffs according to the Court's declaration.

It is well established that in customs classification cases, "a determination of fact or law with respect to one importation is not *res judicata* as to another importation of the same merchandise by the same parties." *Schott Optical Glass, Inc.* v. *United States*, 3 Fed. Cir. (T) 35, 36, 750 F.2d 62, 64 (1984) (citing *United States* v. *Stone & Downer Co.*, the Supreme Court held that "circumstances justify limiting the finality of the conclusion in customs controversies to the identical importation." 274 U.S. at 235. The Supreme Court provided a hypothetical which made clear that "[t]he opportunity to relitigate applies to questions of construction of the classifying statute as well as to questions of fact as to the merchandise." *Schott Optical Glass, Inc.*, 3 Fed. Cir. (T) at 36, 750 F.2d at 64 (citing *Stone & Downer Co.*, 274 U.S. at 236).

This Court, therefore denies plaintiff's application for a declaratory judgment at issue in a manner that would mandate duty-free importation of all books regardless of their pictorial content and further denies plaintiff's application for a mandatory injunction.

CONCLUSION

The Court holds that the merchandise in question is properly classified under TSUS item 270.25 as "Books not specially provided for" at a duty-free rate. Customs is directed to reliquidate the merchandise under item 270.25 at a duty-free rate and refund all excess duties with interest.

(Slip Op. 90–66)

TRENT TUBE DIV., CRUCIBLE MATERIALS CORP.; ARMCO—SPECIALTY STEEL DIV.; DAMASCUS TUBULAR PRODUCTS; ALLEGHENY LUDLUM CORP.; CARPENTER TECHNOLOGY CORP.; AND UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND AVESTA SANDVIK TUBE AB AND AVESTA STAINLESS, INC., DEFENDANT-INTERVENORS

Consolidated Court No. 87–12–01189

[Clarification of Slip Opinion 90–58.]

(Dated July 6, 1990)

Collier, Shannon, Rill & Scott (*Kathleen Weaver Cannon* and *Nicholas D. Giordano*) for plaintiffs.

James A. Toupin, Assistant General Counsel, Office of the General Counsel, United States International Trade Commission (*William T. Kane*) for the defendant.

Freeman, Wasserman & Schneider (*Patrick C. Reed* and *Jack Gumpert Wasserman*) for the defendant–intervenors.

OPINION

CARMAN, *Judge:* On June 20, 1990, the Court issued *Trent Tube v. United States*, Slip Opinion 90–58 and order, which remanded to the International Trade Commission (ITC) the determination of Chairman Liebeler in *Stainless Steel Pipes and Tubes from Sweden*, USITC Pub. No. 2033 (Final) (Nov. 1987). On June 29, 1990, defendant-intervenors Avesta Sandvik Tube AB, *et al.* brought an order to show cause and a motion for an ex parte stay of the Court's remand order of June 20, 1990. Defendant-intervenors contended that the Court made a mistake in law when it erroneously relied on 19 U.S.C. § 1677 as amended in 1988 instead of 19 U.S.C. § 1677 (1982) in Slip Opinion 90–58. Defendant-intervenors also moved for rehearing, amendment or alteration of the order and certification for appeal of the order to the Court of Appeals for the Federal Circuit. The Court granted defendant-intervenors' motion for a stay until oral argument and ordered a hearing on defendant-intervenors' ap-

plication. On the return date, July 3, 1990, plaintiffs moved for a preliminary injunction to enjoin the liquidation of the merchandise in question and filed papers opposing defendant-intervenors' motions and the granting of the stay. The Court heard from all parties at the hearing and determined as follows:

The Court directed the ITC to use 19 U.S.C § 1677(B)(iii) (1982) and 19 U.S.C. § 1677(C)(iii) (1982) in carrying out its remand.

The Court found that it mistakenly used 19 U.S.C. § 1677 as amended in 1988 in its analysis when it should have employed 19 U.S.C. § 1677 (1982). The Court found that its analysis in slip opinion 90–58 was not affected by the citation to the 1988 section and that its analysis applied in the same manner as though the Court had cited the 1982 section as the basis for its determination. The Court found that although it committed error, the result was not a material error of law sufficient to grant a rehearing.

The Court announced that it would issue an errata sheet as to Slip Opinion 90–58 and would issue the instant Slip Opinion further outlining the rationale of this decision.

The Court denied a rehearing of Slip Opinion 90–58.

The Court denied certification of the order to the Court of Appeals for the Federal Circuit.

The Court denied amendment of the remand order since it directed the ITC in open court to apply the 1982 statute, where applicable.

The Court vacated the stay of the remand order.

The Court noted that plaintiffs withdrew their motion for a preliminary injunction in light of the denial of the stay.

Discussion

While the Court did cite incorrectly to the statute as amended in 1988 by the Omnibus Trade and Competitive Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (1988) (the 1988 Act), there was no material alteration of the statute effected by the 1988 amendments.[1] In the

[1]The 1988 Act added the new derivative product amendment and the business cycle amendment to section 1677(7)(C)(iii). Neither change was relevant to the facts of *Trent Tube*.19 U.S.C. § 1677(B)-(C)(iii) as amended by the 1988 Act is set out below. Brackets indicate the changes made to the language of the text; incidental numbering changes in section 1677(7)(B) have not been noted.

(B) Volume and consequent impact

In making determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission, [in each case]—

(i) shall consider—

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, [but only in the context of production operations within the United States; and]

[(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.]

[In the notification required under section 1671d(d) or 1673d(d) of this title, as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.]

(C) Evaluation of [relevant factors]

For purposes of subparagraph (B)—

(i) Volume

Continued

legislative history of the 1988 Act, Congress stated expressly that the amendments to section 1677(7)(B)–(C) were to clarify that the ITC is required to consider and explain its analysis of all the factors outlined in the statute. H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1 at 128 (1987) ("The changes which the Committee has approved to section 771(7)(B)–(C) are not dramatic—indeed most of them are clarifications of current law and of original Congressional intent with respect to current law."); S. Rep. No. 71, 100th Cong., 1st Sess. 115 (1987) ("The changes which the Committee has approved to section 717(7)(B)–(C) [sic] are generally clarifications of current law and of original Congressional intent with respect to current law.").

Rule 61 of the Rules of this Court states that:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

The Court found no reason to disturb its judgment since the underlying rationale remained the same once the citations to the 1982 statute were inserted. Therefore, this Court simultaneously with this opinion issued an errata sheet for Slip Opinion 90–58.

Defendant–intervenors had moved for a rehearing and claimed that reopening of the ITC's investigation was necessary on the ground that it was impossible for Chairman Liebeler or the Commission to provide an explanation of the Chairman's determination since she had left her post at the ITC. The Court found that the issue of a Commissioner leaving the ITC and therefore not being able to respond to a remand order was determined in *SCM Corp.* v. *Unit-*

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) Price

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price [underselling] by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) Impact on affected [domestic] industry

In examining the impact [required to be considered under subparagraph (B)(iii)], the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry [in the United States], including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, [and]

[(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.]

[The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.]

ed States, 2 CIT 1, 519 F. Supp. 911 (1981). In *SCM,* where two Commissioners had left their posts before the remand order had issued, the court stated that the "remand order plainly required an institutional response (by the Commission) rather than responses by each of the individual Commissioners participating in the majority's determination." 2 CIT at 7, 519 F. Supp. at 916. The Court therefore held in the instant case that Chairman Liebeler's departure was not a sufficient ground for a rehearing or a reopening of the investigation.

CONCLUSION

Upon consideration of the determinations made at oral argument on July 3, 1990, this Court holds that Slip Opinion 90–58, in conjunction with the errata sheet which has been issued simultaneously, correctly employs 19 U.S.C. § 1677(7) (1982).

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C90/187 7/3/90 Re C.J.	Inland Motor	88-6-00427	682.25 7.3% or 6.6%	682.30 4.4% or 4.2%	Agreed statement of facts	San Francisco Electric motors
C90/188 7/3/90 Re C.J.	Inland Motor	88-12-00909	682.25 7.3% or 6.6%	682.30 4.4% or 4.2%	Agreed statement of facts	San Francisco Electric motors
C90/189 7/5/90 Re C.J.	C.O. Lynch Enterprises, Inc.	89-11-00627	700.57 37.5%	700.54 6%	Agreed statement of facts	Minneapolis-Re, St. Paul Footwear
C90/190 7/5/90 Re C.J.	C.O. Lynch Enterprises, Inc.	89-11-00597	700.57 37.5%	700.54 6%	Agreed statement of facts	Minneapolis St. Paul Footwear
C90/191 7/5/90 Re C.J.	Alfar Imports, Ltd.	88-1-00031	384.05 19.6%	384.46 16.5%	Agreed statement of facts	New York Cotton blouses
C90/192 7/5/90 Re C.J.	Inland Motor	89-5-00228	682.25 6.6%	682.30 4.2%	Agreed statement of facts	San Francisco Electric motors
C90/193 7/5/90 Re C.J.	Inland Motor	87-7-00791	682.25 7.3%	682.30 4.4%	Agreed statement of facts	San Francisco Electric motors
C90/194 7/5/90 Re C.J.	Inland Motor	89-10-00568	682.25 6.6%	682.30 4.2%	Agreed statement of facts	San Francisco Electric motors
C90/195 7/5/90 Re C.J.	Inland Motor	87-2-00192	682.25 7.3%	682.30 4.4%	Agreed statement of facts	San Francisco Electric motors
C90/196 7/5/90 Re C.J.	Inland Motor	86-9-01197	682.25 8.1% or 7.3%	682.30 4.7% or 4.4%	Agreed statement of facts	San Francisco Electric motors

C90/197 7/5/90 Re C.J.	Inland Motor	86–4–00489	682.25 8.1%	682.30 4.7%	Agreed statement of facts	San Francisco Electric motors
C90/198 7/5/90 Re C.J.	Inland Motor	85–10–01431	682.25 8.8% or 8.1%	682.30 4.9% or 4.7%	Agreed statement of facts	San Francisco Electric motors
C90/199 7/5/90 Re C.J.	J.C. Penney Purchasing Corp.	80–10–01788	685.24 9.9% 720.02 36¢ each	685.24 9.9% (entirety)	U.S. v. Texas Instruments, Inc., 673 F.2d 1375 (1982) and General Electric Co. v. U.S., Court No. 81–9–01227–S	San Francisco AM/FM digital clock radios
C90/200 7/10/90 Re C.J.	Belwith International, Inc.	79–4–00572	534.94 Various rates	727.55 or 727.70 Various rates	Agreed statement of facts	Detroit Porcelain knobs
C90/201 7/10/90 Re C.J.	International Seaway Trading Corp.	82–11–01500	700.95 or 700.85 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. v. U.S., 11 CIT 928 (1987)	New York Footwear
C90/202 7/10/90 Re C.J.	Mitsubishi International Corp.	83–2–00197	700.95 or 700.85 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. v. U.S., 11 CIT 928 (1987)	Boston Miami Footwear
C90/203 7/11/90 Musgrave, J.	Cavalier Label Co.	88–7–00472	383.90, 384.91, 384.94, 384.23, or 384.82 Various rates	376.56 Various rates	Agreed statement of facts	New York Los Angeles Outerwear
C90/204 7/11/90 Musgrave, J.	Pony Sports & Leisure, Inc.	88–3–00173	700.95 12.5% 700.35 8.5%	700.35 8.5% 700.45 10%	Agreed statement of facts	New York Footwear
C90/205 7/11/90 Musgrave, J.	W.J. Byrnes & Co.	88–7–00576	383.90 and 379.95 Various rates	748.45 4.7%	Agreed statement of facts	Seattle Men's & women's jackets

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